

REMARKS/ARGUMENTS

Claims 1-4, 7, 11, 13, 18-19 and 22-23 are pending. Claims 2-4 and 19 have been resubmitted. Claims 1, 7, 11, 13 and 18 have been amended. Claims 5-6, 8-10, 12, 14-17 and 20-21 have been canceled. Claims 22 and 23 have been added.

Claim 13 has been objected to because of the informalities. Claims 1-4 and 18 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,110,080 ("Niv"). Claims 1, 5, 7 and 11 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,170,087 ("Brannon"). Claims 18-19 have been rejected under 35 U.S.C. §102(e) as Brannon has disclosed the claimed structure, and the claimed method steps occur as the Brannon device is used.

Claims 6 and 12 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

Objection to claim 13

Claim 13 has been objected to as claim 13 depends on canceled claim 9. Claim 13 has been amended to recite "The apparatus according to Claim 11...."

Applicants believe that amended claim 13 is now allowable.

Allowable subject matter

Claims 6 and 12 have been objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

Claim 1 has been amended to include all of the limitations of claims 5 and 6, wherein claim 6 depends from its base claim, claim 1, and an intervening claim, claim 6. As such, amended independent claim 1 includes allowable subject matter. Likewise, claim 11 has been amended to include all of the limitations of claim 12. Accordingly, Applicants believe that amended independent claims 1 and 11 are now allowable.

Claims 2-4 and 7 depend from amended claim 1, and claim 13 depends from amended claim 11. Accordingly, claims 2-4, 7 and 13 include all of the limitations of their base claims, rendering them also allowable. As such, Applicant respectfully request that the rejections to claims 1-4, 7, 11 and 13 be withdrawn and that the indication of allowance be made.

Niv

Claims 1-4 and 18 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,110,080 ("Niv"). The Examiner asserted that "Niv discloses a neck exercising apparatus comprising a cap-like device (12) having an outer surface (44) with a plurality of attachment members (52)...."

Claim 18 has been amended to recite, in part, "... cap-like device having an outer surface **formed of** a plurality of attachment members." Likewise, new claims 22 and 23 recite, in part, "... cap-like device having an outer surface **formed of** a plurality of [hook and pile-like] attachment members." Support for the limitation is found in the specification on page 5, lines 27-29. As such, no new matter has been introduced by the limitation.

Niv discloses a therapeutic headpiece that has a cap portion and a plurality of cover members (40), where each of the cover members includes a lower surface (44) that may be **stacked on top of the cap portion using snap-type fasteners (48, 50)**. (col. 4, lines 45-59) Thus, the lower surface (44) does not form the outer surface of the cap portion.

In contrast, the cap-like device of amended claim 18 and new claims 22-23 have an outer surface **formed of** a plurality of attachment members as illustrated in FIG. 1. For this reason, Applicants believe that amended claim 18 and new claims 22 and 23 are allowable over Niv. Accordingly, Applicant respectfully request that the 35 U.S.C. §102(b) rejections to claim 18 be withdrawn and that the indication of allowance for claims 18, 22 and 23 be made.

Brannon

Claims 1, 5, 7 and 11 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,170,087 ("Brannon"). Claims 18-19 have been rejected as Brannon has disclosed the claimed structure, and the claimed method steps occur as the Brannon device is used.

Brannon discloses hats that have fasteners (34) that have various shapes and are permanently secured to the outer surface by conventional pressure and/or heat activated adhesive material. (col.7, line 61 – col.8, line 7) Thus, each hat has an outer surface with fasteners (34) secured thereon.

In contrast, as mentioned above, amended claim 18 recites, in part, "... cap-like device having an outer surface **formed of** a plurality of attachment members." Likewise, new claims 22 and 23 recite, in part, "... cap-like device

having an outer surface **formed of** a plurality of [hook and pile-like] attachment members." As such, Applicants believe the device set forth in amended claim 18 and new claims 22-23 is different than those disclosed by Brannon, and consequently, the claimed method steps of claims 18 and 19 do not occur as the Brannon device is used. Accordingly, Applicant respectfully request that the U.S.C. §102(e) rejection to claims 18 and 19 be withdrawn and that the indication of allowance be made.

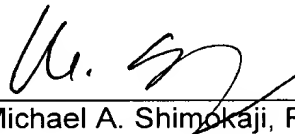
CONCLUSION

Based on the reasons as set forth above, Applicant respectfully requests reconsideration of the objections and claim rejections, and allowance of claims 1-4, 7, 11, 13, 18-19 and 22-23.

In the event the examiner wishes to discuss any aspect of this response, please contact the attorney at the telephone number identified below.

Respectfully submitted,

By:

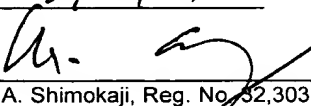

Michael A. Shimokaji, Reg. No. 32,303

SHIMOKAJI & ASSOCIATES, P.C.
1301 Dove Street, Suite 480
Newport Beach, CA 9266
(949) 223-0838

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on

3/2/04

Michael A. Shimokaji, Reg. No. 32,303